QUESTIONS PRESENTED

1. Whether the search of petitioner's suitcases at the Los Angeles airport prior to her boarding a plane to New York was based upon probable cause.

2. Whether the trial court properly sustained government counsel's refusal to reveal the identity of an informer whose information helped lead to the search of petitioner's luggage.

STATEMENT

On December 13, 1963, after a jury trial in the United States District Court for the Southern District of California, petitioner was convicted of trafficking in marihuana, in violation of 21 U.S.C. 176(a), and sentenced to imprisonment for five years. On March 18, 1965, the court of appeals remanded the case for further findings of fact regarding the circumstances surrounding petitioner's arrest and the search of her suitcases (Pet. App. A, 343 F. 2d 95). After a hearing on May 18, 1965, the trial court ruled the search valid as an incident to an arrest based upon probable cause. The court of appeals affirmed unanimously (Pet. App. B).

Customs agent Greppin had become familiar with a procedure used by marihuana traffickers to ship marihuana from California to New York (R. 6-9, Greppin Affidavit).[1] Reservations on an airline would be obtained by telephone under an assumed name.

[1] A two-volume record has been filed with the Clerk of this Court. Volume 2 contains the transcript of the May 18, 1965, rehearing on the motion to suppress, herein designated "R." The district court's Findings of Fact, dated June 2, 1965, and agent Greppin's affidavit are in Volume 1.

Shortly before take-off, a courier, generally a young woman of Latin extraction, would arrive at the airport and secure the flight ticket. She would pay for the ticket and for the additional cost of transporting her overweight suitcases, which contained marihuana.

In November 1962, a receiver in New York was arrested (R. 8). The arresting officer found a list of telephone calls from the receiver to Oscar de Oca, brother of petitioner's co-defendant, Juan de Oca, who lived in Los Angeles, California (R. 8, district court's Findings of Fact, par. 2). As a result, the de Oca brothers were placed under surveillance. In May 1963, one Gomez was arrested as he tried to bring 250 pounds of marihuana across the Mexican border into California. Gomez told the arresting officers that his station wagon had been left at the house of the person to whom the marihuana was being shipped. A little while later Gomez' vehicle was located parked in front of Juan de Oca's house, and after thirty days Greppin and Los Angeles police sergeant Beckmann impounded the abandoned vehicle and located a large quantity of marihuana debris inside it (R. 10–11).

In September 1963, agent Greppin and officer Beckmann received information from one Manzaneras, an informant, that the de Oca brothers were to receive a shipment of 1,000 pounds of marihuana from Mexico. From another unnamed informant they learned that the actual delivery was to be made in Los Angeles to two men, one of whom, Rodriguez, had been arrested two months previously for possession of marihuana (R. 11–12). Customs agents located the two men at a hotel. One was registered under the assumed name

"J. Martinez" (R. 11, Findings, par. 7). On September 17, 1963, by maintaining a surveillance of the hotel, agents overheard the two men engaging in a conversation to the effect that "Martinez" and his cohort expected to receive the marihuana that day. The airlines were immediately notified to contact the agents if anyone registered under the name "Martinez" for a New York flight (R. 12). Greppin and Beckmann received a call that at 9 p.m. such a reservation had been made for a 10 p.m. flight to New York.

The officers proceeded to the airport, where they began a surveillance. At 9:45, a car in which petitioner was a passenger arrived at the airport. Greppin recognized the driver as Juan de Oca (R. 13–14). Petitioner, a young woman of Latin extraction, left the vehicle and stood by two suitcases which de Oca had removed from the trunk of the car. (Findings, par. 12). After de Oca drove away, petitioner went to the ticket counter, and a porter carried her luggage there. Greppin followed petitioner and the porter to the ticket counter, and observed that the suitcases were similar in size and type to those found in Rodriguez' apartment when he was arrested (R. 15). Greppin heard petitioner ask for reservations in the name of "Martinez," and observed that her luggage weighed 140 pounds. As she took her wallet from her purse and began to pay for the ticket and excess weight, Greppin interrupted (R. 16). He and Beckmann identified themselves and asked to speak to her about their narcotics investigation. Beckmann asked petitioner for some identification, and petitioner replied that she sometimes traveled under the name "Martinez," but

that her real name was Cipres (R. 18). As Beckmann conversed with petitioner, Greppin noticed that one suitcase had been tagged and placed on a conveyor belt which took the luggage down to a loading platform. At 9:55 p.m., Greppin retrieved that suitcase from the handler, while Beckmann took the other bag from the scale (Findings, par. 16; R. 19–20).

When asked about the contents of her suitcases, petitioner replied that they contained clothes and cosmetics. Asked if the agents could search the suitcases, petitioner replied, "Yes, I have nothing to hide." (Findings, par. 17; Greppin Affidavit.) However, when asked for the keys, petitioner told the agents that the bags were locked and the keys were in New York. At this point Greppin returned to the bag which he had retrieved from the conveyor belt. By pushing the sides in, and placing his nose to the seam of the suitcase, Greppin smelled an odor familiar to him, that of marihuana (R. 21–22). He thereupon opened the suitcase (which was unlocked) and discovered marihuana. The agents then announced to petitioner that she was under arrest. The other bag was also unlocked, and, when opened, revealed its contents to be marihuana (Findings, par. 19).

At her trial petitioner moved to suppress the evidence thus obtained. The court denied her motion to suppress. It ruled that since petitioner had given her uncoerced consent to the search, it was valid, and that no other findings were necessary. The court of appeals disagreed, observing that the circumstances indicated that petitioner's consent might have been "under color of the badge." (Pet. App. A, 4.) The

case was remanded for a determination of "unresolved factual issues," including those bearing on whether the search could be justified as incidental to a lawful arrest. On remand, the district court made the following findings:

> 22. * * * [A]t the time the bags were searched the officers had reasonably trustworthy information of facts sufficient to warrant a prudent man in believing that defendant Cipres was committing an offense and that the removal of the evidence was threatened.
>
> 23. The search was valid as incident to a substantially contemporaneous arrest, for the officers had probable cause for the arrest at the time of the search, and the circumstances suggested that immediate search was necessary to preserve the material subject to seizure.
>
> 24. Having reasonable cause to believe that there was marihuana in the two suitcases in question which had been unlawfully introduced into the United States, the search was also justified by 19 U.S.C.A. Section 482 (search by customs agent).

ARGUMENT

1. Petitioner argues that the search of her luggage at the Los Angeles airport within minutes of the time her plane was about to depart was unjustifiable. The argument is without merit. This case is yet another in a series of incidents involving a marked pattern familiar to the customs agents and Los Angeles police. See *Hernandez* v. *United States*, 352 F. 2d 240 (C.A. 9), certiorari denied, June 20, 1966 (No. 1293 Misc. O.T., 1965). In the light of the factual situation that

has been detailed in the Statement, *supra*, the action taken by the police officer and customs agent was clearly justified. They had ample reason to believe that the luggage about to be placed on an airplane, and hence in transit, contained contraband. See *Carroll* v. *United States*, 267 U.S. 132; *Brinegar* v. *United States*, 338 U.S. 160.

2. At the hearing on petitioner's motion to suppress, the government declined to reveal the identity of the informer who had told them Rodriguez was to receive a shipment of marihuana. When asked how the name of the informer would be helpful, petitioner's counsel replied, "I don't know what information this informant had, whether he saw something, heard something, or was just guessing" (R. 32). After a review of the applicable law (R. 26–34), the district court, in its discretion, permitted the government not to disclose the name of the informer. In the circumstances of this case, that ruling was not an abuse of discretion.

This Court, in *Roviaro* v. *United States*, 353 U.S. 53, considered at length the balance between the public's interest in protecting the flow of information and the individual's right to prepare his defense. The Court held that where the disclosure of an informer's identity "is relevant and helpful to the defense of an accused, or is essential to a fair determination of a cause, the privilege [of nondisclosure] must give way." (353 U.S. at 60–61.) But, the Court noted, "[w]hether a proper balance renders nondisclosure erroneous must depend on the particular circumstances of each case, taking into consideration the crime charged, the possible defenses, the possible significance

of the informer's testimony, and other relevant factors." (353 U.S. at 62.)

Clearly, in this case, the attempt to have the informer's identity revealed was nothing more than "a shot in the dark." *Hurst* v. *United States,* 344 F. 2d 327 (C.A. 9). The informer took no part in the offense itself. See *Cook* v. *United States,* 354 F. 2d 529 (C.A. 9). And examination of the informer would not be pertinent to negating his reliability. An informer is reliable if he provides a flow of well founded information to the agents. Since reliability is thus in the mind of the agent, not the informer, examination of the informer to disprove his reliability would not have been legally fruitful. *Jones* v. *United States,* 326 F. 2d 124 (C.A. 9), certiorari denied, 377 U.S. 956.

Furthermore, the information that the customs agent obtained from the unidentified informer was fully corroborated. From sources independent of the informer the agents had learned of the scheme of the de Oca brothers, and one agent had overheard a conversation between the intended receivers in which they disclosed the date and time of the shipment. The "likelihood that * * * [petitioner] would have used the informant had the name been disclosed, and that the strong showing of probable cause could then have been dissipated, is thin almost to the point of nonexistence." *United States* v. *Tucker,* 248 F. Supp. 911, 917 (S.D.N.Y.). See, also, *United States ex rel. Coffee* v. *Fay,* 344 F. 2d 625 (C.A. 2); *Marderosian* v. *United States,* 337 F. 2d 759 (C.A. 1), certiorari denied, 380 U.S. 971; *Johnson* v. *United States,* 328 F. 2d 883 (C.A. 5), certiorari denied, 379 U.S. 849.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the petition for a writ of certiorari should be denied.

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Supreme Court of the United States

OCTOBER TERM, 1966

No. 230

RAMONA CIPRES,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI DIRECTED TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT.

PETITIONER'S REPLY TO BRIEF FOR THE UNITED STATES IN OPPOSITION

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